

Senate File 345 - Introduced

SENATE FILE 345

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 1128)

A BILL FOR

1 An Act relating to the regulation of certain tobacco products,
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 453E.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Business*" means any trade, occupation, activity,
5 or enterprise engaged in for the purpose of selling or
6 distributing tobacco products and devices in this state.

7 2. "*Consumer*" means any person who has title to or
8 possession of devices in storage, for use or other consumption
9 in this state.

10 3. "*Controlled substance*" means controlled substance as
11 defined in section 124.101.

12 4. "*Delivery sale*" means any sale of a device to a purchaser
13 in this state where the purchaser submits the order for
14 such sale by means of a telephonic or other method of voice
15 transmission, mail or any other delivery service, or the
16 internet or other online service and the device is delivered by
17 use of mail or a delivery service. The sale of a device shall
18 constitute a delivery sale regardless of whether the seller is
19 located in this state. "*Delivery sale*" does not include a sale
20 to a distributor or retailer of a device not for personal use.

21 5. "*Department*" means the department of revenue.

22 6. *a.* "*Device*" means any equipment or product, made in
23 whole or in part of glass or metal, that is designed for use
24 in inhaling through combustion tobacco, hemp, other plant
25 materials, or a controlled substance. "*Device*" does not
26 include a vapor product or a tobacco smoking product made of
27 briar, meerschaum, clay, or corn cob and not having a surface,
28 aperture, or other feature consisting of metal or glass.

29 *b.* In determining whether any particular item constitutes a
30 "*device*", the following factors may be considered:

31 (1) The instructions, oral or written, provided with the
32 item concerning its use.

33 (2) Any descriptive materials accompanying the item which
34 explain or depict its use.

35 (3) National and local advertising concerning the item's

1 use.

2 (4) The manner in which the item is displayed for sale.

3 (5) Whether the owner of the place of business, or anyone in
4 control of the item at the place of business, is a legitimate
5 supplier of like or related items to the community, such as a
6 licensed distributor, manufacturer, or subjobber.

7 (6) Direct or circumstantial evidence of the ratio of sales
8 of the item to the total sales of the place of business.

9 (7) The existence and scope of legitimate uses of the item
10 in the community.

11 (8) Expert testimony concerning the item's use.

12 c. A particular item may constitute a device notwithstanding
13 any lawful use of the item.

14 7. "*Device retailer*" means a person engaged in the retail
15 sale of tangible personal property who is also engaged in
16 selling devices to the ultimate consumer.

17 8. "*Director*" means the director of revenue.

18 9. "*Distributor*" means the same as defined in section
19 453A.42.

20 10. "*Manufacturer*" means the same as defined in section
21 453A.42.

22 11. "*Place of business*" means any place where tobacco
23 products and devices are sold, stored, or kept for the purpose
24 of sale or consumption; or for a business within or without the
25 state that conducts delivery sales, any place where tobacco
26 products and devices are sold or are kept for the purpose of
27 sale, including delivery sales.

28 12. "*Retail outlet*" means each place of business from which
29 tobacco products and devices are sold to consumers.

30 13. "*Sale*" means any transfer, exchange, or barter, in
31 any manner or by any means whatsoever, for consideration, and
32 includes and means all sales made by any person.

33 14. "*Subjobber*" means the same as defined in section
34 453A.42.

35 15. "*Tobacco products*" means cigars; little cigars;

1 cheroots; stogies; periques; granulated, plug cut, crimp cut,
2 ready rubbed, and other smoking tobacco; snuff; cavendish;
3 plug and twist tobacco; fine-cut and other chewing tobaccos;
4 shorts; refuse scraps, clippings, cuttings and sweepings of
5 tobacco, and other kinds and forms of tobacco, prepared in
6 such manner as to be suitable for chewing or smoking in a pipe
7 or otherwise, or both for chewing and smoking; but shall not
8 include cigarettes as defined in section 453A.1.

9 16. "*Tobacco retailer*" means a retailer as defined in
10 section 453A.42.

11 17. "*Use*" means the exercise of any right or power
12 incidental to the ownership of tobacco products or devices.

13 18. "*Vapor product*" means the same as defined in section
14 453A.1.

15 Sec. 2. NEW SECTION. 453E.2 Administration — rules —
16 intent.

17 1. The director shall administer this chapter. The director
18 shall collect, supervise, and enforce the collection of all
19 fees, taxes, and civil penalties imposed under this chapter.

20 2. The director may adopt rules pursuant to chapter 17A that
21 are necessary to enforce this chapter.

22 3. The director may designate employees to administer
23 and enforce the provisions of this chapter, including the
24 collection of all taxes provided for in this chapter. In the
25 enforcement, the director may request aid from the attorney
26 general, the special agents of the state, any county attorney,
27 or any peace officer. The director may appoint clerks and
28 additional help as may be needed to administer this chapter.

29 4. This chapter or the holding of a device retailer permit
30 or a device delivery sale permit under this chapter shall not
31 be construed to provide for any of the following:

32 a. Immunity from prosecution or the limitation of the
33 application of other state law and regulations governing
34 tobacco products, drug paraphernalia, or controlled substances.

35 b. Authorization for the possession, marketing, offering

1 for sale, or selling of a device, the possession, marketing,
2 offering for sale, or selling of which is otherwise prohibited
3 by state or federal law.

4 Sec. 3. NEW SECTION. 453E.3 Device retailers — permits —
5 fees.

6 1. *Permits required.* A person shall not engage in the
7 business of a device retailer at any place of business or
8 through delivery sales, unless the person complies with all of
9 the following:

10 a. The person has received and holds a permit as a tobacco
11 retailer pursuant to section 453A.47A that has not been
12 suspended or revoked and is not expired; complies with the
13 provisions of chapter 453A applicable to a tobacco retailer;
14 and sells tobacco products in addition to devices at the retail
15 outlet or through delivery sales.

16 b. The person has received and holds a permit as a device
17 retailer pursuant to this section that has not been suspended
18 or revoked and is not expired, and complies with the provisions
19 of this chapter.

20 2. *No sales without device retailer permit.* A device
21 retailer shall not sell devices until an application has been
22 filed and the fee prescribed paid for a permit and until such
23 permit is obtained and only while such permit is not suspended,
24 revoked, or expired.

25 3. *Number of device retailer permits.* An application shall
26 be filed and a permit obtained for each place of business
27 owned or operated by a device retailer located in the state.
28 If an out-of-state device retailer makes delivery sales of
29 devices, an application shall be filed with the department and
30 a permit shall be issued for the out-of-state device retailer's
31 principal place of business.

32 4. *Issuance.* Cities may issue device retailer permits
33 to device retailers located within their respective limits.
34 County boards of supervisors may issue device retailer permits
35 to device retailers located in their respective counties,

1 outside of the corporate limits of cities. The city or county
2 shall submit a duplicate of any application for a device
3 retailer permit to the alcoholic beverages division of the
4 department of commerce within thirty days of issuance of a
5 device retailer permit. The alcoholic beverages division of
6 the department of commerce shall submit the current list of
7 all device retailer permits issued to the department of health
8 and human services by the last day of each quarter of a state
9 fiscal year.

10 5. *Fees — expiration.* All device retailer permits provided
11 for in this section shall expire on June 30 of each year. A
12 device retailer permit shall not be granted or issued until the
13 applicant has paid the fees provided for in this section for
14 the period ending June 30 next, to the city or county granting
15 the device retailer permit. The fee for a device retailer
16 permit is one thousand five hundred dollars.

17 6. *Application.* Device retailer permits shall be issued
18 only upon application, accompanied by the one thousand five
19 hundred dollar fee, made upon forms furnished by the department
20 upon written request. The failure to furnish such forms
21 shall be no excuse for the failure to file the form unless
22 absolute refusal is shown. The forms shall specify all of the
23 following:

24 a. The manner under which the device retailer transacts or
25 intends to transact business as a device retailer.

26 b. The principal office, residence, and place of business,
27 to which the device retailer permit is to apply.

28 c. If the applicant is not an individual, the names of the
29 partners if the applicant is a partnership or the names of
30 the principal officers or members if the applicant is a legal
31 entity, and their addresses.

32 d. Such other information as the director shall by rule
33 prescribe.

34 7. *Records and reports of device retailers.*

35 a. The director shall prescribe the forms necessary for

1 the efficient administration of this section and may require
2 uniform books and records to be used and kept by each device
3 retailer or other person as deemed necessary.

4 *b.* Every device retailer shall, when requested by the
5 department, make additional reports as the department deems
6 necessary and proper and shall at the request of the department
7 furnish full and complete information pertaining to any
8 transaction of the device retailer involving the purchase or
9 sale of devices, including the number of devices sold.

10 8. *Requirements for sale.*

11 *a.* A device retailer shall not sell, give, or otherwise
12 supply a device to any person under twenty-one years of age and
13 shall verify the age of all purchasers of devices. If a device
14 is purchased at a retail outlet, valid proof of the purchaser's
15 identity and age shall be obtained at the time the device is
16 supplied to the purchaser. If a device is purchased through a
17 delivery sale, valid proof of the purchaser's identity and age
18 shall be obtained in accordance with section 453E.4.

19 *b.* A device retailer shall only display and sell devices
20 in a location of a retail outlet where the device retailer
21 ensures that the devices are not visible to a person younger
22 than twenty-one years of age and where no person younger than
23 twenty-one years of age is present or permitted to enter at any
24 time.

25 Sec. 4. NEW SECTION. 453E.4 **Delivery sale of devices —**
26 **permit — requirements.**

27 1. *a.* A person shall not mail, ship, or otherwise cause
28 to be delivered any device in connection with a delivery sale
29 to any other person within this state unless the person has
30 applied for and holds a device delivery sale permit as provided
31 in this section.

32 *b.* A person applying for a device delivery sale permit shall
33 submit an application for the permit electronically, or in a
34 manner prescribed by the director.

35 *c.* An application submitted pursuant to paragraph "b" shall

1 be accompanied by a permit fee in the amount of one thousand
2 five hundred dollars.

3 *d.* The director may in accordance with this section issue a
4 device delivery sale permit which shall be valid for one year
5 from the date of issuance unless it is sooner suspended or
6 revoked for a violation of this section.

7 *e.* A permit issued pursuant to this section may be renewed
8 annually by submitting a renewal application in a manner
9 prescribed by the director, accompanied by the one thousand
10 five hundred dollar permit fee.

11 2. The delivery sale of devices pursuant to this
12 section shall be subject to the following requirements and
13 restrictions:

14 *a.* All devices delivered by delivery sale directly to a
15 resident of this state shall be sold only by a device delivery
16 sale permit holder.

17 *b.* A device delivery sale permit holder shall only deliver
18 devices by delivery sale to a resident of this state who is at
19 least twenty-one years of age for the resident's personal use
20 and not for resale.

21 *c.* All devices delivered by delivery sale directly to a
22 resident of this state shall be conspicuously labeled with the
23 words "CONTAINS DEVICE: SIGNATURE OF PERSON AGE 21 OR OLDER
24 REQUIRED FOR DELIVERY" or shall be conspicuously labeled with
25 alternative wording preapproved by the director.

26 *d.* A device delivery sale permit holder shall obtain
27 valid proof of identity and age prior to delivery, and shall
28 obtain the signature of a person age twenty-one or older as a
29 condition of delivery.

30 *e.* A device delivery sale permit holder shall maintain
31 records of devices delivered which include the name of the
32 device manufacturer, quantity of devices delivered, recipient's
33 name and address and verification of age on an electronic or
34 paper form of signature from the recipient of the device, and
35 sales and excise taxes paid. Records shall be submitted to

1 the director on a monthly basis in a form and manner to be
2 determined by the director. Records shall be maintained for at
3 least five years.

4 3. A device delivery sale permit holder shall remit to the
5 director an amount equivalent to the applicable sales tax and
6 excise tax on devices subject to delivery sale at the rates
7 specified in section 423.2 and section 453E.5, as applicable.
8 The amount shall be remitted at the time and in the manner
9 provided in section 453E.5.

10 4. A device delivery sale permit holder shall be deemed to
11 have consented to the jurisdiction of the director or any other
12 agency or court in this state concerning enforcement of this
13 section and any related laws, rules, or regulations. A device
14 delivery sale permit holder shall allow the director to perform
15 an audit of records of devices upon request.

16 Sec. 5. NEW SECTION. 453E.5 Sales and excise taxes on
17 sales and delivery sales of devices — examination of records and
18 premises — subpoena for witnesses and papers.

19 1. A sale or delivery sale of a device within this state
20 shall be subject to the sales tax provided in chapter 423,
21 subchapter II. All the provisions for the lien of the tax, its
22 collection, and all actions as provided in the uniform sales
23 and use tax administration Act, chapter 423, shall apply to the
24 tax imposed in this chapter.

25 2. There is levied and imposed an excise tax on a device
26 purchased in this state through a sale or purchased for use
27 in this state through a delivery sale of forty percent of the
28 purchase price of the device.

29 3. A device delivery sale permit holder shall be deemed to
30 have waived all claims that such permit holder lacks physical
31 presence within this state for purposes of collecting and
32 remitting the sales and excise taxes.

33 4. A device delivery sale permit holder making taxable
34 delivery sales of devices within this state and a device
35 retailer shall remit to the department all sales and excise

1 taxes due on such sales at the times and in the manner as
2 established by rule of the director.

3 5. The director may adopt rules pursuant to chapter 17A to
4 administer this section.

5 6. Excise taxes collected under this section shall be
6 deposited in the specialty courts program fund created in
7 section 453E.6.

8 7. *a.* For the purpose of enabling the department to
9 determine the tax liability of device delivery sale permit
10 holders, device retailers, or any other person dealing in
11 devices or to determine whether a tax liability has been
12 incurred, the department shall have the right to inspect any
13 premises of the device delivery sale permit holder, device
14 retailer, or other person dealing in devices located within
15 or without the state of Iowa where devices are manufactured,
16 produced, made, stored, transported, sold, or offered for
17 sale or exchange, and to examine all of the records required
18 to be kept or any other records that may be kept incident
19 to the conduct of the business of said device delivery sale
20 permit holder, device retailer, or any other person dealing in
21 devices.

22 *b.* The department shall also have the right as an incident
23 to determining the tax liability, or whether a tax liability
24 has been incurred, to examine all stocks of devices and to
25 remain upon the premises for such length of time as may be
26 necessary to fully determine the tax liability, or whether a
27 tax liability has been incurred.

28 *c.* It shall be unlawful for a permit holder to fail to
29 produce upon demand of the department any records required to
30 be kept or to hinder or prevent in any manner the inspection of
31 the records or the examination of the premises.

32 *d.* In the case of any departmental inspection conducted
33 under this section requiring department personnel to travel
34 outside the state of Iowa, any additional costs incurred by
35 the department for out-of-state travel expenses shall be borne

1 by the device delivery sale permit holder, device retailer, or
2 other person dealing in devices. These additional costs shall
3 be those costs in excess of the costs of a similar inspection
4 conducted at the geographical point located within the state
5 of Iowa nearest to the out-of-state inspection point. In
6 lieu of conducting an on-premises out-of-state inspection,
7 the department shall have the authority to direct the device
8 delivery sale permit holder, device retailer, or other person
9 dealing in devices to assemble and transport all records
10 described in this subsection to the nearest practical and
11 convenient geographical location in Iowa for inspection by the
12 department.

13 Sec. 6. NEW SECTION. **453E.6 Specialty courts program fund.**

14 1. A specialty courts program fund is created in the state
15 treasury under the control of the governor's office of drug
16 control policy. Moneys from permit fees, with the exception
17 of permit fees collected by cities or counties in the issuance
18 of permits, and excise taxes imposed and collected pursuant
19 to section 453E.5, shall be deposited in the fund. Permit
20 fees collected by cities under this chapter shall be paid to
21 the treasurer of the city where the permit is effective, or
22 to another city officer as designated by the city council,
23 and credited to the general fund of the city. Permit fees
24 collected by counties under this chapter shall be paid to
25 the county treasurer and credited to the general fund of the
26 county.

27 2. Moneys in the fund are appropriated to the governor's
28 office of drug control policy to be used for the purpose of the
29 support of specialty courts to address underlying substance
30 use disorder-related and mental health-related issues that
31 contribute to the contact of individuals with the justice
32 system.

33 3. The drug policy coordinator of the governor's office of
34 drug control policy shall develop criteria for approval of a
35 request for specialty courts program funding. Annually, by

1 May 1, the state court administrator shall submit a specialty
 2 courts funding request for the upcoming fiscal year to the drug
 3 policy coordinator of the governor's office of drug control
 4 policy for approval, and the drug policy coordinator shall
 5 approve or reject any such request no later than June 1. The
 6 state court administrator may submit a subsequent request
 7 within fifteen days of notification of the rejection of an
 8 initial request. The state court administrator shall consult
 9 with the director of the department of corrections prior to
 10 submitting any funding request that involves the department of
 11 corrections.

12 4. The fund shall be separate from the general fund of the
 13 state and shall not be considered part of the general fund of
 14 the state. The moneys in the fund shall not be considered
 15 revenue of the state, but rather shall be moneys of the fund.
 16 The moneys in the fund are not subject to reversion to the
 17 general fund of the state under section 8.33 and shall not
 18 be transferred, used, obligated, appropriated, or otherwise
 19 encumbered, except to provide for the purposes of this section.
 20 Notwithstanding section 12C.7, subsection 2, interest or
 21 earnings on moneys deposited in the fund shall be credited to
 22 the fund.

23 5. The treasurer of state shall provide a quarterly report
 24 of fund activities and balances to the drug policy coordinator
 25 of the governor's office of drug control policy.

26 Sec. 7. NEW SECTION. 453E.7 Permits — suspension —
 27 revocation — penalties.

28 1. The provisions of chapter 453A, including the permit
 29 suspension and revocation provisions and the civil penalties
 30 established in section 453A.22, shall apply to tobacco
 31 retailers who are also device retailer permit holders or
 32 device delivery sale permit holders under this chapter. The
 33 provisions of chapter 453A applicable to persons other than
 34 tobacco retailers who violate chapter 453A shall also apply to
 35 persons who violate this chapter.

1 2. A person holding a device retailer permit or a device
2 delivery sale permit under this chapter who violates this
3 chapter by marketing or selling a device to be used or
4 attempted to be used or that is capable of use in combination
5 with tobacco, hemp, other plant materials, or a controlled
6 substance, to knowingly or intentionally and primarily inhale
7 the material or substance through combustion commits a serious
8 misdemeanor and is also subject to permit revocation.

9 3. *a.* If a person holding a device retailer permit or a
10 device delivery sale permit under this chapter has willfully
11 violated this chapter, the department shall revoke the permit
12 upon notice and hearing. The hearing before the department may
13 be held at a site in the state as the department may direct.
14 The notice shall be given by mailing a copy to the permit
15 holder's place of business as it appears on the application
16 for a permit. If, upon hearing, the department finds that the
17 violation has occurred, the department may revoke the permit.

18 *b.* If a device retailer permit or a device delivery
19 sale permit is suspended or revoked under this section, the
20 suspension or revocation shall only apply to the place of
21 business at which the violation occurred and shall not apply to
22 any other place of business to which the permit applies but at
23 which the violation did not occur.

24 *c.* The department or local authority shall report the
25 suspension or revocation of a device retailer permit or a
26 device delivery sale permit under this section to the alcoholic
27 beverages division of the department of commerce within thirty
28 days of the suspension or revocation of the permit.

29 4. In addition to any other applicable penalties, a device
30 retailer permit holder or a device delivery sale permit holder
31 who violates this chapter shall be subject to the following:

32 *a.* For a first violation, a civil penalty of five hundred
33 dollars.

34 *b.* For a second violation, a civil penalty of one thousand
35 dollars.

1 and must verify the age of all purchasers of devices; and
2 provides that a device retailer shall only display and sell
3 devices in a location where the device retailer ensures that
4 the devices are not visible to a person younger than 21 years
5 of age and where no person younger than 21 years of age is
6 present or permitted to enter at any time.

7 The bill establishes requirements for the delivery sale
8 of devices including permit requirements and restrictions
9 including all devices delivered by delivery sale directly to
10 a resident of this state shall be delivered by a holder of
11 a device delivery sale permit; that a device delivery sale
12 permit holder shall only deliver devices by delivery sale to
13 a resident of this state who is at least 21 years of age, for
14 the resident's personal use and consumption and not for resale;
15 all devices delivered by delivery sale directly to a resident
16 of this state shall be conspicuously labeled with the words
17 "CONTAINS DEVICE: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED
18 FOR DELIVERY" or with an alternative wording preapproved by
19 the director of revenue; a device delivery sale permit holder
20 shall obtain valid proof of identity and age prior to delivery,
21 and shall obtain the signature of a person age 21 or older
22 as a condition of delivery; and that a device delivery sale
23 permit holder shall maintain records of devices delivered which
24 include certain information that must be maintained for five
25 years.

26 The bill provides for the imposition, collection, and
27 payment of sales and excise taxes on the retail sale, including
28 delivery sales, of devices. Moneys from permit fees, with the
29 exception of city and county permit fees, and excise taxes
30 imposed and collected under the bill, are to be deposited in
31 the specialty courts program fund created in the bill and are
32 appropriated to the governor's office of drug control policy
33 to be used for the purpose of the support of specialty courts
34 to address underlying substance use disorder-related and
35 mental health-related issues that contribute to the contact of

1 individuals with the justice system.

2 The bill provides penalties for violations of the bill.

3 The applicable provisions of Code chapter 453A (cigarette and
4 tobacco taxes and regulation of alternative nicotine products
5 and vapor products) including penalties and license suspension
6 and revocation provisions and penalties applicable to those
7 other than permit holders apply to tobacco retailers who are
8 also device retailer permit holders or device delivery sale
9 permit holders as well as to those who are not permit holders.

10 Additionally, a person holding a device retailer permit or a
11 device delivery sale permit who violates the bill by marketing
12 or selling a device to be used or attempted to be used or that
13 is capable of use in combination with tobacco, hemp, other
14 plant materials, or a controlled substance, to knowingly or
15 intentionally and primarily inhale the material or controlled
16 substance through combustion, commits a serious misdemeanor and
17 is also subject to permit revocation. A serious misdemeanor is
18 punishable by confinement for no more than one year and a fine
19 of at least \$430 but not more than \$2,560.

20 If a person holding a device retailer permit or a device
21 delivery sale permit willfully violates the bill, the
22 department shall revoke the permit upon notice and hearing.

23 In addition to any other applicable penalties, a device
24 retailer permit holder or a device delivery sale permit holder
25 who violates the Code chapter is subject to a civil penalty
26 of \$500 for a first violation, a civil penalty of \$1,000 for
27 a second violation, and a third violation constitutes grounds
28 for suspension or revocation of the permit. A person other
29 than a device retailer permit holder or a device delivery
30 sale permit holder, including a person who engages in the
31 business of a device retailer at a place of business or
32 through delivery sales without holding an applicable, valid
33 permit under the bill, who violates the Code chapter commits
34 a serious misdemeanor and is also subject to a civil penalty
35 of \$1,000 for a first violation, a civil penalty of \$2,000 for

1 a second violation, and a civil penalty of \$5,000 for a third
2 or subsequent violation.